

ENGINEERING REPORT
TO AMEND SECTIONS 73.606 AND 73.621
OF THE FCC RULES BY SUBSTITUTING
UHF-TV NTSC CHANNEL 33 FOR CHANNEL 14
AT BOISE IDAHO

MAY 1997

COHEN, DIPPELL AND EVERIST, P.C.
CONSULTING ENGINEERS
RADIO AND TELEVISION
WASHINGTON, D.C.

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington)
) ss
District of Columbia)

Warren M. Powis, being duly sworn upon his oath, deposes and states that:

He is a graduate electrical engineer of the University of Canterbury, New Zealand, a Registered Professional Engineer in the District of Columbia, the State of Virginia, the State of South Carolina, and Vice President of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005; previously employed for 15 years with the New Zealand Broadcasting Corporation; a member of the Institution of Professional Engineers New Zealand (IPENZ), the Association of Federal Communications Consulting Engineers (AFCCE), and the National Society of Professional Engineers (NSPE).

That his qualifications are a matter of record in the Federal Communications Commission;

That the attached engineering report was prepared by him or under his supervision and direction and,

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts he believes them to be true.

Warren M. Davis

Warren M. Powis
District of Columbia
Professional Engineer
Registration No. 8339

Subscribed and sworn to before me this 14th day of May, 1997.

day of Mar, 1997.
Carl F. Lauer
Notary Public

My Commission Expires: 2/28/98

This engineering report has been prepared on behalf of KM Communications, Inc. ("KM"), applicant for a UHF-TV station on Channel 14 at Boise, Idaho (FCC File No. BPCT-941215KF). KM previously proposed to amend the TV Table of Allotments, Section 73.606 of the FCC Rules to substitute Channel 21 for Channel 14. The DTV Table of Allotments in Appendix B of MM Docket No. 87-268¹ conflicts with the previous Channel 21 request. KM now requests an amendment of Sections 73.606 and 73.622 as follows.

Boise, Idaho

Section 73.606(b): Substitute NTSC Channel 33 for Channel 14

Section 73.622(b): Add complementary DTV Channel 29

The reference coordinates for the proposed new allotment are at the Deer Point antenna farm.

NAD-27

North Latitude: 43° 45' 18"

West Longitude: 116° 05' 52"

The proposed Deer Point transmitter site is located 19.7 km north-northeast of Boise, Idaho, and complies with the FCC minimum distances separations required under Sections 73.610, 73.623 and 73.698 of the FCC Rules.

¹Sixth Report and Order, adopted April 3, 1997, released April 21, 1997

The proposed Deer Point operation will provide City Grade (80 dBu) service to Boise, Idaho.

Allocation Situation

Tables I and I-A show the allocation situation for the proposed NTSC Channel 33 allotment. Table II shows the allocation situation for a suggested companion DTV Channel 29. The proposed allotments meet the required distance separations to all United States allotments.

Tables III and III-A show the allocation situation for supplementary NTSC Channel 39 which would be available for allotment if other parties express an interest in serving Boise, Idaho. Table IV shows the allocation situation for a potential companion DTV Channel 36. Accordingly, KM requests that it be permitted to modify its application to specify NTSC Channel 33 "without loss of cut-off protection."

The NTSC Channels 33 and 39 allotments and DTV Channels 29 and 36 allotments meet the ATV freeze for TV applications in that it is located 555.6 km from the Portland, Oregon, reference point (NL 45°31'06", WL 122°40'35").

Reasons for Channel Substitution

A petition to deny KM's Channel 14 application was filed by Idaho Communications, L.P. and Gem Communications, Inc. and the radio licensees listed in its Exhibit A ("Petitioners").

The proposed channel substitution will enable KM to operate without impacting Public Safety and Commercial land-mobile station operations whose operating

frequencies are located immediately adjacent to UHF-TV Channel 14. Furthermore, second harmonic effects of TV Channel 14 fall across the aural STL spectrum used by FM transmitting stations on Deer Point to receive their programming. Without a channel substitution, we estimate that KM would have to spend \$500,000 to \$1,000,000 to construct and operate on Channel 14 without causing interference to land-mobile and aural STL's.

Accordingly, the proposed Channel 33 NTSC/Channel 29 DTV substitution will enable KM to bring a new television service to the Boise area without inviting unnecessary incompatibility problems and the associated expenses involved in mitigating these problems.

COHEN, DIPPELL AND EVERIST, P. C.

TABLE I
NTSC TO NTSC UHF-TV ALLOCATION SITUATION
FOR THE PROPOSED SUBSTITUTION OF
CHANNEL 33 FOR CHANNEL 14 AT
BOISE, IDAHO
MAY 1997

<u>Channel</u>	<u>Adjacent Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Separation</u>	
					<u>Actual km</u>	<u>Required km</u>
33	0	Prop. NTSC	Boise, ID	N 43°45'18" W 116°05'52"	--	--
18	-15	None within 150 km			--	119.9
19	-14	None within 150 km			--	95.7
25	-8	None within 100 km			--	31.4
26	-7	None within 150 km			--	95.7
28	-5	None within 100 km			--	31.4
29	-4	None within 100 km			--	31.4
30	-3	None within 100 km			--	31.4
31	-2	None within 100 km			--	31.4
32	-1	None within 150 km			--	87.7
33	0	None within 350 km			--	280.8
34	+1	None within 150 km			--	87.7
35	+2	None within 100 km			--	31.4
36	+3	None within 100 km			--	31.4
37	+4	(Radio Astronomy use only)			--	n/a
38	+5	None within 100 km			--	31.4
40	+7	None within 150 km			--	95.7
41	+8	None within 100 km			--	31.4
47	+14	None within 150 km			--	95.7
48	+15	None within 150 km			--	119.9

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TABLE I-A
NTSC TO DTV UHF-TV ALLOCATION SITUATION
FOR THE PROPOSED SUBSTITUTION OF
CHANNEL 33 FOR CHANNEL 14 AT
BOISE, IDAHO
MAY 1997

<u>Channel</u>	<u>Adjacent Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Separation</u>	
					<u>Actual km</u>	<u>Required km</u>
33	0	Prop. NTSC	Boise, ID	N 43°45'18" W 116°05'52"	--	--
25	-8	KBCI DTV	Boise, ID	N 43°45'16" W 116°05'53"	0.0	< 24.1
26	-7	KTVB DTV	Boise, ID	N 43°45'16" W 116°05'56"	0.1	< 24.1
29	-4	KTRV DTV	Nampa, ID	N 43°45'18" W 116°05'52"	0.0	< 24.1
30	-3	None within 120 km			--	> 96.6
31	-2	None within 120 km			--	> 96.6
32	-1	None within 120 km			--	88.5
33	0	KUID DTV	Moscow, ID	N 46°40'54" W 116°58'13"	332.4	> 244.6
34	+1	Allot. DTV	Weiser, ID	N 44°14'49" W 116°58'12"	88.8	> 88.5
35	+2	None within 120 km			--	> 96.6
36	+3	None within 120 km			--	> 96.6
37	+4	(Radio Astronomy use only)			--	n/a
40	+7	None within 120 km			--	> 96.6
41	+8	None within 120 km			--	> 96.6
47	+14	None within 120 km			--	> 96.6
48	+15	None within 120 km			--	> 96.6

TABLE II
NTSC AND DTV UHF-TV ALLOCATION SITUATION
SUGGESTED COMPLEMENTARY DTV CHANNEL 29
TO THE CHANNEL 33 NTSC ALLOTMENT AT
BOISE, IDAHO
MAY 1997

NTSC Channel	Adjacent Channel	Call	City/State	Geographic Coordinates	Separation	
					Actual km	Required km
29	0	Prop. NTSC	Boise, ID	N 43°45'18" W 116°05'52"	--	--
14	-15	Delete NTSC	Boise, ID	N 43°45'18" W 116°05'52"	0.0 *	< 9.7
15	-14	None within 120 km			--	> 96.6
21	-8	None within 120 km			--	> 96.6
22	-7	None within 120 km			--	> 96.6
25	-4	None within 120 km			--	> 96.6
26	-3	None within 120 km			--	> 96.6
27	-2	None within 120 km			--	> 96.6
28	-1	None within 120 km			--	> 88.5
29	0	None within 350 km			--	> 244.6
30	+1	None within 120 km			--	> 88.5
31	+2	None within 120 km			--	> 96.6
32	+3	None within 120 km			--	> 96.6
33	+4	None within 120 km			--	> 96.6
40	+7	None within 120 km			--	> 96.6
41	+8	None within 120 km			--	> 96.6
DTV Channel						
-1	28	None within 120 km			--	> 88.5
0	29	None within 300 km			--	> 223.7
+1	30	None within 120 km			--	> 88.5

*PRM to Specify NTSC Channel 33

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TABLE III
NTSC TO NTSC UHF-TV ALLOCATION SITUATION
FOR THE COMPLEMENTARY ALLOTMENT OF CHANNEL 39
WITH THE PROPOSED SUBSTITUTION OF
CHANNEL 33 FOR CHANNEL 14 AT
BOISE, IDAHO
MAY 1997

<u>Channel</u>	<u>Adjacent Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Separation</u>	
					<u>Actual km</u>	<u>Required km</u>
39	0	Prop. NTSC	Boise, ID	N 43°45'18" W 116°05'52"	--	--
24	-15	None within 150 km			--	> 119.9
25	-14	None within 150 km			--	> 95.7
31	-8	None within 100 km			--	> 31.4
32	-7	None within 150 km			--	> 95.7
34	-5	None within 100 km			--	> 31.4
35	-4	None within 100 km			--	> 31.4
36	-3	None within 100 km			--	> 31.4
37	-2	(Radio Astronomy use only)			--	> n/a
38	-1	None within 150 km			--	> 87.7
39	0	None within 350 km			--	> 280.8
40	+1	None within 150 km			--	> 87.7
41	+2	None within 100 km			--	> 31.4
42	+3	None within 100 km			--	> 31.4
43	+4	None within 100 km			--	> 31.4
44	+5	None within 100 km			--	> 31.4
46	+7	None within 150 km			--	> 95.7
47	+8	None within 100 km			--	> 31.4
53	+14	None within 150 km			--	> 95.7
54	+15	None within 150 km			--	119.9

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TABLE III-A
NTSC TO DTV UHF-TV ALLOCATION SITUATION
FOR THE COMPLEMENTARY ALLOTMENT OF CHANNEL 39
WITH THE PROPOSED SUBSTITUTION OF
CHANNEL 33 FOR CHANNEL 14 AT
BOISE, IDAHO
MAY 1997

<u>Channel</u>	<u>Adjacent Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Separation</u>	
					<u>Actual km</u>	<u>Required km</u>
39	0	Prop. NTSC	Boise, ID	N 43°45'18" W 116°05'52"	--	--
31	-8	None within 120 km			--	> 96.6
32	-7	None within 120 km			--	> 96.6
35	-4	None within 120 km			--	> 96.6
36	-3	None within 120 km			--	> 96.6
37	-2	None within 120 km			--	> 96.6
38	-1	None within 120 km			--	> 88.5
39	-0	None within 350 km			--	> 244.6
40	+1	None within 120 km			--	> 88.5
41	+2	None within 120 km			--	> 96.6
42	+3	None within 120 km			--	> 96.6
43	+4	None within 120 km			--	> 96.6
46	+7	None within 120 km			--	> 96.6
47	+8	None within 120 km			--	> 96.6
53	+14	None within 120 km			--	> 96.6
54	+15	None within 120 km			--	> 96.6

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TABLE IV
NTSC AND DTV UHF-TV ALLOCATION SITUATION
FOR THE SUGGESTED COMPLEMENTARY DTV CHANNEL 36
TO THE POTENTIAL CHANNEL 39 AT NBC ALLOTMENT AT
BOISE, IDAHO
MAY 1997

NTSC Channel	Adjacent Channel	Call	City/State	Geographic Coordinates	Separation	
					Actual km	Required km
36	0	Prop. NTSC	Boise, ID	N 43°45'18" W 116°05'52"	--	--
21	-15	None within 120 km			--	> 96.6
22	-14	None within 120 km			--	> 96.6
28	-8	None within 120 km			--	> 96.6
29	-7	None within 120 km			--	> 96.6
32	-4	None within 120 km			--	> 96.6
33	-3	None within 120 km			--	> 96.6
34	-2	None within 120 km			--	> 96.6
35	-1	None within 120 km			--	> 88.5
36	0	None within 350 km			--	> 244.6
37	+1	None within 120 km			--	> 88.5
38	+2	None within 120 km			--	> 96.6
39	+3	None within 120 km			--	> 96.6
40	+4	None within 120 km			--	> 96.6
43	+7	None within 120 km			--	> 96.6
44	+8	None within 120 km			--	> 96.6
DTV Channel						
35	-1	None within 120 km			--	> 88.5
36	0	KIDK DTV	Idaho Falls, ID	N 43°29'51" W 112°39'50"	278.6	> 223.7
37	+1	(Radio Astronomy use only)			--	n/a

Federal Communications Commission

DA 97-_____

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.606(b))
of the Commission's Rules, the)
Table of Allotments for)
Television Broadcast Stations)
(Boise, Idaho))

MM Docket No. 97-_____
RM-9039

NOTICE OF PROPOSED RULE MAKING

Adopted:

Released:

Comment Date:

Reply Comment Date:

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by KM Communications, Inc. ("Petitioner") on July 10, 1996, as amended by Petitioner on May 15, 1997, proposing the allotment of UHF television Channel 33 in substitution for NTSC Channel 14 at Boise, Idaho.¹ The allotment is potentially the community's third local television service. If Channel 33 is substituted for Channel 14, Petitioner requests that its pending application for Channel 14 at Boise (File No. BPCT-941215KF) be amended to specify operation on Channel

¹ KM originally requested that Channel 21 be substituted for Channel 14, but amended its petition for rulemaking to request that Channel 33 be substituted for Channel 14 after Channel 21 was reserved as the DTV channel to be paired with NTSC Channel 4 at Boise, in the Commission's Sixth Report and Order in the DTV proceeding. See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Sixth Report and Order, FCC 97-115 (released April 21, 1997) ("Sixth Report and Order").

33, with cut-off protection. Petitioner states its intention to amend its application to apply for Channel 33 at Boise if Channel 33 is allotted with cut-off protection. Petitioner also requests that Channel 29 be allotted as the digital television ("DTV") channel to be paired with analog National Television System Committee ("NTSC") Channel 33.

2. In support of its proposal, Petitioner states that on December 15, 1994, Petitioner filed its application (File No. BPCT-941215KF) for a construction permit for Channel 14, and on February 2, 1995, the Commission released a Public Notice accepting Petitioner's application for filing and setting a March 20, 1995 cut-off date.² Petitioner states that International Television Network, Inc. ("ITN") was the only party to file a competing, mutually-exclusive application for Channel 14 at Boise before the cut-off date (File No. BPCT-950320KE). Since the applications are mutually exclusive, the conflict would have to be resolved by the burden and expense of a comparative hearing and, at the present time, there is no basis upon which to either designate the applications for a comparative hearing or to otherwise resolve these mutually exclusive applications.³ However, Petitioner states that, pursuant to the Commission's recent waiver for ninety days of the limit on settlement payments made to parties dismissing applications as part of a universal settlement of a frozen comparative proceeding,⁴ Petitioner and ITN entered into a settlement agreement and filed a Joint Request for Approval of Universal Settlement (the "Joint Request") on December 14, 1995, whereby ITN agreed to dismiss its competing application; the Joint Request remains pending before the Commission.

3. Petitioner also states that a petition to deny was filed against its application by certain land mobile radio licensees, claiming that Petitioner's proposed Channel 14 operation may cause objectionable interference to their existing operations, to which Petitioner filed an opposition and the petitioners a reply;⁵ and that the Commission requested further information on this issue, to which Petitioner responded with a timely-filed, responsive amendment. Petitioner states that the proposed substitution of Channel 33 for Channel 14 would resolve the land mobile radio interference concerns, and therefore would facilitate the resolution of the comparative proceeding and remove an obstacle to the approval of the settlement agreement and

² See Public Notice, Report No. A-188 at 2 (released February 2, 1995).

³ The Commission has imposed a freeze on comparative hearings, see FCC Freezes Comparative Proceedings, 9 FCC Rcd 1055 (1994), and Modification of FCC Comparative Proceedings Freeze Policy, 9 FCC Rcd 6689 (1994), in light of the holding in Bechtel v. F.C.C., 10 F.3d 875 (D.C. Cir. 1993).

⁴ See Public Notice, FCC Waives Limitations on Payments to Dismissing Applicants in Universal Settlements of Cases Subject to Comparative Proceedings Freeze Policy, FCC 95-391 (released September 15, 1995).

⁵ See Petition to Deny filed March 20, 1995, by Idaho Communications, L.P. and Gem Communications, Inc.; Opposition to Petition to Deny filed April 4, 1995 by KM; and Reply to Opposition to Petition to Deny filed April 28, 1995 by petitioners.

the grant of the Joint Request, which otherwise may be delayed pending the Commission's resolution of the land mobile radio petition. Furthermore, Petitioner estimates that construction on Channel 14 may require an additional \$500,000 to \$1,000,000, to resolve the land mobile radio interference concerns that would be avoided by the proposed substitution of Channel 33 for Channel 14, and therefore such economic costs could be saved and the public interest served by the substitution.

4. Petitioner asserts that the allotment of Channel 33 at Boise may be made in compliance with the Commission's technical requirements and its policies for protecting future advance television allocations,⁶ including the Commission's DTV rules and policies adopted in the Sixth Report and Order.

5. Moreover, Petitioner contends that Commission precedent and policy has been to add an additional channel for a community if the only vacant channel is the subject of a comparative proceeding, and the new channel can be added consistent with other allotment policies, such as the minimum distance separation rules and the ATV freeze policy, and where additional channels are available for allotment in response to other expressions of interest, citing Sioux Falls, South Dakota, 11 FCC Rcd 1069 (Allocations Branch 1996). Petitioner also contends that the Commission has allowed petitioners to retain cut-off protection for their pending applications in similar circumstances, where no other timely-filed expressions of interest are filed or, if such expressions of interest are filed, there is at least one additional allotment which can be made to accommodate those parties. Id.; see also, Copeland, Kansas, 5 FCC Rcd 7682 (1990); Roseburg, Oregon, 6 FCC Rcd 4369 (1991). Accordingly, Petitioner claims that the substitution of Channel 33 for Channel 14, with cut-off protection, would resolve the potential land mobile radio interference concerns, facilitate the resolution of the comparative proceeding and remove an obstacle to the approval of the settlement agreement and the grant of the Joint Request, thereby expediting authorization of a new television service for Boise, and thus providing the public with access to additional stations.

6. We believe Petitioner's proposal warrants consideration because the substitution of Channel 33 for Channel 14 at Boise, Idaho, could potentially provide the community with its third local television broadcast service. In addition, the proposed allotment substitution would resolve the potential land mobile radio interference concerns and speed the resolution of the comparative proceeding, by resolving an obstacle to the approval of the settlement agreement and the Joint Request that have been pending before the Commission since December 1995. Petitioner's amendment of its petition to request Channel 33 instead of Channel 21 would also be consistent with the Commission's stated goal to "avoid creating DTV allotments that would conflict with proposed new NTSC allotments" in petitions for rulemaking filed before the July

⁶ Boise is approximately 555 kilometers from the Portland, Oregon freeze area, and thus is well beyond the area subject to the advance television freeze. See Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, 52 Fed. Reg. 28346, July 29, 1987.

25, 1996 adoption of the Sixth Further NPRM in the DTV proceeding,⁷ by resolving a conflict with a proposed NTSC allotment created by the adoption of the DTV allocation table in the Sixth Report and Order.⁸ An engineering analysis has determined that Channel 33, with zero offset, can be allotted to Boise in compliance with the Commission's minimum distance separation requirements at city reference coordinates.⁹ Since it appears that there are at least two additional UHF television channels available for other expressions of interest at Boise, we shall propose to allow petitioner to amend its application to specify operation on Channel 33 in lieu of Channel 14, with cut-off protection. An engineering analysis has also determined that Channel 29, with zero offset, can be allotted to Boise as the DTV channel to be paired with NTSC Channel 33 at the same city reference coordinates, in compliance with the Commission's Rules.

7. Accordingly, we shall seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u> _____	Channel No.	
	<u>Present</u>	<u>Proposed</u>
Boise, Idaho	2, *4+, 7, 14	2, *4+, 7, 33

8. We shall also seek comments on the proposed amendment of the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u> _____	Channel No.	
	<u>Present</u>	<u>Proposed</u>
Boise, Idaho	*21, 25, 26	*21, 25, 26, 29

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

⁷ See Sixth Report and Order at ¶ 112 (citing Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968 (1996) ("Sixth Further NPRM").

⁸ See Sixth Report and Order, Appendix B at B-18 (allotting Channel 21 as the DTV channel to be paired with NTSC Channel 4 at Boise).

⁹ The reference coordinates for Channel 33 at Boise are North Latitude 43° 45' 18" and West Longitude 116° 05' 52".

10. Interested parties may file comments on or before ____ [date] ____, and reply comments on or before ____ [date] ____, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner, or its counsel, as follows:

Alan C. Campbell, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W., Suite 200
Washington, D.C. 20036-3101
(Counsel for KM Communications, Inc.)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact ____ [name] ____, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

CERTIFICATE OF SERVICE

I, Laura Ann Campbell, hereby certify that on this 15th day of May, 1997, copies of the foregoing "Amendment to Petition for Rulemaking" have been served by hand delivery (* denotes hand delivery) or first class mail, postage prepaid, upon the following:

Clay Pendarvis, Chief*
Television Branch, Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 702
Washington, D.C. 20554

John A. Karousos, Chief*
Allocations Branch, Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 565
Washington, D.C. 20554

Gordon W. Godfrey
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 566
Washington, D.C. 20554

Richard Hildreth, Esquire
Fletcher, Heald & Hildreth, P.L.C.
Counsel to International Television Network, Inc.
1300 N. 17th Street, 11th Floor
Rosslyn, Virginia 22209

Raymond J. Kimball, Esq.
Jeffrey S. Neeley, Esq.
Counsel to Idaho Communications, L.P.
and Gem Communications, Inc.
Ross & Hardies
888 16th Street, N.W., 4th Floor
Washington, D.C. 20006

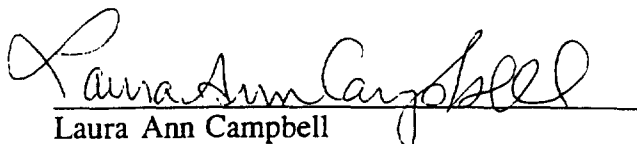

Laura Ann Campbell

EXHIBIT C

ENGINEERING REPORT

ENGINEERING REPORT
TO AMEND SECTION 73.606
OF THE FCC RULES BY SUBSTITUTING
UHF-TV NTSC CHANNEL 39 FOR CHANNEL 14
AT BOISE, IDAHO

SEPTEMBER 1999

COHEN, DIPPELL AND EVERIST, P.C.
CONSULTING ENGINEERS
RADIO AND TELEVISION
WASHINGTON, D.C.

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington)
) ss
District of Columbia)

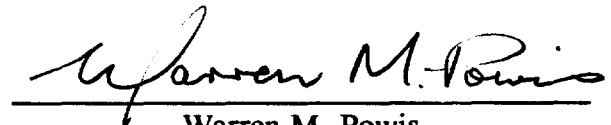
Warren M. Powis, being duly sworn upon his oath, deposes and states that:

He is a graduate electrical engineer of the University of Canterbury, New Zealand, a Registered Professional Engineer in the District of Columbia, the State of Virginia, the State of South Carolina, and Vice President of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005; previously employed for 15 years with the New Zealand Broadcasting Corporation; a member of the Institution of Professional Engineers New Zealand (IPENZ), the Association of Federal Communications Consulting Engineers (AFCCE), and the National Society of Professional Engineers (NSPE).

That his qualifications are a matter of record in the Federal Communications Commission;

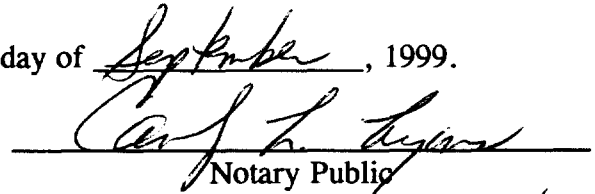
That the attached engineering report was prepared by him or under his supervision and direction and,

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts he believes them to be true.



Warren M. Powis
District of Columbia
Professional Engineer
Registration No. 8339

Subscribed and sworn to before me this 20th day of September, 1999.


Notary Public

My Commission Expires: 2/28/2003

This engineering report has been prepared on behalf of KM Communications, Inc. ("KM"), applicant for a UHF-TV station on Channel 14 at Boise, Idaho (FCC File No. BPCT-941215KF). KM initially proposed to amend the TV Table of Allotments, Section 73.606 of the FCC Rules to substitute Channel 21 for Channel 14. Since the original DTV Table of Allotments adopted by the Commission in Appendix B of the Sixth Report and Order in MM Docket No. 87-168¹ conflicted with the previous Channel 21 request, KM requested an amendment of Sections 73.606 and 73.622 for NTSC Channel 33 and DTV Channel 29.

While KM's petition for rule making has been pending, the Commission had adopted the Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order in the DTV proceeding, and therefore, KM is submitting this update to its engineering to reflect the amended DTV Table of Allotments adopted therein. KM now proposes to substitute Channel 39 instead of Channel 33 so as not to displace a low power television station on Channel 33) for NTSC Channel 14 at Boise, Idaho, as an amendment to FCC Rule Section 73.606(b) as follows:

Boise, Idaho

Section 73.606(b); Substitute NTSC Channel 39 for Channel 14

The reference coordinates for the proposed new allotment are at the Deer Point antenna farm.

NAD-27

North Latitude: 43° 45' 18"

West Longitude: 116° 05' 52"

¹Sixth Report and Order, Adopted April 3, 1997, Released April 21, 1997.

The proposed Deer Point transmitter site is located 19.7 km north-northeast of Boise, Idaho, and complies with the FCC minimum distance separation required under Sections 73.610, 73.623, and 73.698 of the FCC Rules.

The proposed Deer Point operation will provide City Grade (80 dBu) service to Boise, Idaho.

Allocation Situation

Tables I and I-A show the allocation situation for the proposed NTSC Channel 39 allotment. The proposed allotment meets the required distance separations to all United States allotments.

Tables II and II-A show the allocation situation for a supplementary NTSC Channel 50 which would be available for allotment if other parties express an interest in serving Boise, Idaho. Accordingly, KM requests that it be permitted to modify its application to specify NTSC Channel 39 "without loss of cut-off protection".

The NTSC Channel 39 and 50 allotments are not subject to the ATV freeze for TV applications in that they are located 555.6 km from the Portland, Oregon, reference point (NL 45°31'06", WL 122°40'35").

Reasons for Channel Substitution

A petition to deny KM's Channel 14 application was filed by Idaho Communications, L.P. and Gem Communications, Inc. and the radio licensees listed in its Exhibit A ("Petitioners").

The proposed channel substitution will enable KM to operate without potentially impacting Public Safety and Commercial land-mobile radio station operations whose operating frequencies are located immediately adjacent to UHF-TV Channel 14. Furthermore, second harmonic effects of TV Channel 14 may fall across the aural STL spectrum used by FM transmitting stations on Deer Point

KM COMMUNICATIONS, INC.
BOISE, IDAHO

PAGE 3

to receive their programming. Without a channel substitution, we estimate that KM may have to spend \$500,000 to \$1,000,000 to construct and operate on Channel 14 without causing interference to land-mobile and aural STL's.

Accordingly, the proposed Channel 39 NTSC substitution will enable KM to bring a new television service to the Boise area without inviting unnecessary potential interference problems to existing land-mobile radio and aural STL services and the associated expenses involved in mitigating these potential problems. The proposed channel substitution, therefore, would serve the public interest.

Federal Communications Commission

DA 99-_____

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Amendment of Section 73.606(b))
of the Commission's Rules, the)
Table of Allotments for)
Television Broadcast Stations)
(Boise, Idaho))

MM Docket No. 99-_____
RM-9039

NOTICE OF PROPOSED RULE MAKING

Adopted:

Released:

Comment Date:

Reply Comment Date:

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by KM Communications, Inc. ("Petitioner") on July 10, 1996, as amended by Petitioner on May 15, 1997 and October 19, 1999, proposing the allotment of analog National Television System Committee ("NTSC") UHF television Channel 39 in substitution for analog NTSC UHF television Channel 14 at Boise, Idaho.¹ The allotment is potentially the community's third local television service. If Channel 39 is substituted for Channel 14, Petitioner requests that its pending application for Channel

¹ KM originally requested that Channel 21 be substituted for Channel 14, but amended its petition for rulemaking to request that Channel 33 be substituted for Channel 14 after Channel 21 was reserved as the DTV channel to be paired with NTSC Channel 4 at Boise, in the Commission's Sixth Report and Order in the DTV proceeding. See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Sixth Report and Order, FCC 97-115, 12 FCC Rcd 14588 (1997) ("Sixth Report and Order"). KM subsequently changed its requested channel from Channel 33 to Channel 39 so as not to displace an existing Low Power Television ("LPTV") station from Channel 33.

14 at Boise (File No. BPCT-941215KF) be amended to specify operation on Channel 39, with cut-off protection. Petitioner states its intention to amend its application to apply for Channel 39 at Boise if Channel 39 is allotted with cut-off protection.

2. In support of its proposal, Petitioner states that on December 15, 1994, Petitioner filed its application (File No. BPCT-941215KF) for a construction permit for Channel 14, and on February 2, 1995, the Commission released a Public Notice accepting Petitioner's application for filing and setting a March 20, 1995 cut-off date.² Petitioner states that International Television Network, Inc. ("ITN") was the only party to file a competing, mutually-exclusive application for Channel 14 at Boise before the cut-off date (File No. BPCT-950320KE). Since the applications were mutually exclusive, the applications originally could only be resolved by the burden and expense of a comparative hearing and, at that time, there was no basis upon which to either designate the applications for a comparative hearing or to otherwise resolve the mutually exclusive applications.³ However, Petitioner states that, pursuant to the Commission's ninety day waiver in late 1995 of the limit on settlement payments made to parties dismissing applications as part of a universal settlement of a frozen comparative proceeding,⁴ Petitioner and ITN entered into a settlement agreement and filed a Joint Request for Approval of Universal Settlement (the "Joint Request") on December 14, 1995, whereby ITN agreed to dismiss its competing application; the Joint Request remains pending before the Commission.⁵

3. Petitioner also states that a petition to deny was filed against its application by certain land mobile radio licensees, claiming that Petitioner's proposed Channel 14 operation may cause objectionable interference to their existing operations, to which Petitioner filed an opposition and

² See Public Notice, Report No. A-188 at 2 (released February 2, 1995).

³ The Commission has imposed a freeze on comparative hearings, see FCC Freezes Comparative Proceedings, 9 FCC Rcd 1055 (1994), and Modification of FCC Comparative Proceedings Freeze Policy, 9 FCC Rcd 6689 (1994), in light of the holding in Bechtel v. F.C.C., 10 F.3d 875 (D.C. Cir. 1993).

⁴ See Public Notice, FCC Waives Limitations on Payments to Dismissing Applicants in Universal Settlements of Cases Subject to Comparative Proceedings Freeze Policy, FCC 95-391 (released September 15, 1995).

⁵ On or about December 23, 1997, ITN exercised a contractual right to terminate the settlement agreement, and filed a letter with the Commission requesting that the Joint Request be dismissed; however, the Commission did not dismiss the Joint Request, which remains pending. On August 20, 1999, KM and ITN entered into an amendment to the original settlement agreement, whereby ITN revoked its termination of the original settlement agreement, among other changes, and filed a letter with the Commission requesting action on the Joint Request.

the petitioners a reply;⁶ and that the Commission requested further information on this issue, to which Petitioner responded with a timely-filed, responsive amendment. Petitioner states that the proposed substitution of Channel 39 for Channel 14 would resolve the potential land mobile radio interference concerns, and therefore would facilitate the resolution of the comparative proceeding and remove an obstacle to the approval of the settlement agreement and the grant of the Joint Request, which otherwise may be delayed pending the Commission's resolution of the land mobile radio petition. Furthermore, Petitioner estimates that construction on Channel 14 may require an additional \$500,000 to \$1,000,000, to resolve the potential land mobile radio interference concerns that would be avoided by the proposed substitution of Channel 39 for Channel 14, and therefore such economic costs could be saved and the public interest served by the substitution.

4. Petitioner asserts that the allotment of Channel 39 at Boise may be made in compliance with the Commission's technical requirements and its policies for protecting future advance television allocations,⁷ including the Commission's DTV rules and policies adopted in the Sixth Report and Order, as amended on reconsideration.⁸

5. Moreover, Petitioner contends that Commission precedent and policy has been to add an additional channel for a community if the only vacant channel is the subject of a comparative proceeding, and the new channel can be added consistent with other allotment policies, such as the minimum distance separation rules and the ATV freeze policy, and where additional channels are available for allotment in response to other expressions of interest, citing Sioux Falls, South Dakota, 11 FCC Rcd 1069 (Allocations Branch 1996). Petitioner also contends that the Commission has allowed petitioners to retain cut-off protection for their pending applications in similar circumstances, where no other timely-filed expressions of interest are filed or, if such expressions of interest are filed, there is at least one additional allotment which can be made to accommodate those parties. Id.; see also, Copeland, Kansas, 5 FCC Rcd 7682 (1990); Roseburg, Oregon, 6 FCC Rcd 4369 (1991). Accordingly, Petitioner claims that the substitution of Channel 39 for Channel 14, with cut-off protection, would resolve the potential land mobile radio interference concerns, facilitate the resolution of the comparative proceeding and remove an obstacle to the approval of the settlement agreement and the grant of the Joint Request, thereby expediting authorization of a new

⁶ See Petition to Deny filed March 20, 1995, by Idaho Communications, L.P. and Gem Communications, Inc.; Opposition to Petition to Deny filed April 4, 1995 by KM; and Reply to Opposition to Petition to Deny filed April 28, 1995 by petitioners.

⁷ Boise is approximately 555 kilometers from the Portland, Oregon freeze area, and thus is well beyond the area subject to the advance television freeze. See Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, 52 Fed. Reg. 28346, July 29, 1987.

⁸ See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, FCC 98-315, 14 FCC Rcd 1348 (1998)("DTV Reconsideration Order").

television service for Boise, and thus providing the public with access to additional stations.

6. We believe Petitioner's proposal warrants consideration because the substitution of Channel 39 for Channel 14 at Boise, Idaho, could potentially provide the community with its third local television broadcast service. In addition, the proposed allotment substitution would resolve the potential land mobile radio interference concerns and speed the resolution of the comparative proceeding, by resolving an obstacle to the approval of the settlement agreement and the Joint Request that have been pending before the Commission since December 1995. Petitioner's amendment of its petition to request Channel 39 instead of Channel 21 would also be consistent with the Commission's stated goal to "avoid creating DTV allotments that would conflict with proposed new NTSC allotments" in petitions for rulemaking filed before the July 25, 1996 adoption of the Sixth Further NPRM in the DTV proceeding,⁹ by resolving a conflict with a proposed NTSC allotment created by the adoption of the DTV allocation table in the Sixth Report and Order.¹⁰ An engineering analysis has determined that Channel 39, with zero offset, can be allotted to Boise in compliance with the Commission's minimum distance separation requirements at city reference coordinates.¹¹ Since it appears that there are at least two additional UHF television channels available for other expressions of interest at Boise, we shall propose to allow petitioner to amend its application to specify operation on Channel 39 in lieu of Channel 14, with cut-off protection.

7. Accordingly, we shall seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

City _____	Channel No.	
	<u>Present</u>	<u>Proposed</u>
Boise, Idaho	2, *4+, 7, 14	2, *4+, 7, 39

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before [date] , and reply comments

⁹ See Sixth Report and Order at ¶ 112 (citing Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968 (1996) ("Sixth Further NPRM").

¹⁰ See Sixth Report and Order, Appendix B at B-18 (allotting Channel 21 as the DTV channel to be paired with NTSC Channel 4 at Boise).

¹¹ The references coordinates for Channel 39 at Boise are North Latitude 43° 45' 18" and West Longitude 116° 05' 52".

on or before [date], and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner, or its counsel, as follows:

Jeffrey L. Timmons, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W., Suite 200
Washington, D.C. 20036-3101
(Counsel for KM Communications, Inc.)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact [name], Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

CERTIFICATE OF SERVICE

I, Jennifer Reyes, hereby certify that on this 19th day of October, 1999, copies of the foregoing "Amendment to Petition for Rulemaking" have been served by hand delivery (* denotes hand delivery) or first class mail, postage prepaid, upon the following:

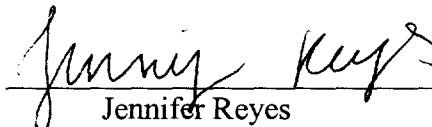
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Jennifer Reyes